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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/586,216	07/17/2006	Julian Cabanas Falcon	OT-5370	2712
7590	02/03/2009		EXAMINER	
Lisa A. Bongiovi Otis Elevator Company 10 Farm Springs Farmington, CT 06032			KRUER, STEFAN	
			ART UNIT	PAPER NUMBER
			3654	
			MAIL DATE	DELIVERY MODE
			02/03/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/586,216	CABANAS FALCON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Stefan Kruer	3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 10 November 2008.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1 - 5 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1 - 5 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 17 July 2006 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>(1)</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application
	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### ***Priority***

The amendment to the first sentence of the specification to reference the prior Application No. PCT/IB2004/000676, filed 9 March 2004, is acknowledged.

### ***Specification***

The amendment to the specification obviates the objection as previously made.

### ***Drawings***

The replacement drawings filed 10 November 2008 are accepted.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1 - 3** are rejected under 35 U.S.C. 102(b) as being anticipated by Mori et al (WO 02/060802).

**Re: Claims 1 – 3**, Mori et al disclose an elevator car (1, Fig. 2) comprising:

- a single, rigid toe guard *member* (7b, Fig. 2) slidably mounted to the bottom of the car so as to be slidable upwards in the event that the toe guard member strikes the bottom (13a) of a hoist way pit (13, Page 1, L. 24).
- wherein the toe guard member is slidably mounted to a car door sill bracket (7a).
- one or more strengthening brackets (8) that depend downwardly from the underside (6) of the car, said toe guard member being slidably mounted to said bracket(s).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

**Claim 4** is rejected under 35 U.S.C. 103(a) as being unpatentable over Mori et al.

Mori et al disclose an elevator car comprising strengthening brackets (8) that depend downwardly from the underside (6) of the car, said toe guard member being slidably mounted to said brackets, and said brackets are rigid; however, Mori et al are silent with respect to their length to that of the toe guard member.

Nevertheless, it would have been an obvious to one of ordinary skill in the art, as a matter of optimization and experimentation, to provide the said brackets as shorter than said toe guard, in as much as a selection of a length of said bracket is a matter of design preference and application.

**Claim 5** is rejected under 35 U.S.C. 103(a) as being unpatentable over Mori et al in view of Martin (4,556,129).

Mori et al are silent with respect to a safety switch arranged to stop the elevator in the event that the toe guard member is pushed to the uppermost end of its travel.

Attention is directed to Martin who teaches his safety switch (54, 60 - 65, Fig. 2 and Fig. 4) arranged to stop his elevator in the event that his toe guard (44) has "...deflected to an extent less than that required to permit an (sic) object to be clamped...." (Abstract), thereby an upper(most) end of allowable travel, for purpose of safety.

It would have been obvious to one of ordinary skill in the art to modify the reference of Mori et al with the teaching of Martin for safety.

### ***Response to Arguments***

Applicant's arguments filed 10 November 2008 have been fully considered but they are not persuasive.

With respect to the recitation "... a single, rigid toe guard *member* slidably mounted to a bottom of the car so as to be slideable upwards in the event that the toe guard *member* strikes a bottom of a hoistway pit", Mori et al reviews their "... embodiment ... so that part of it will rise upwardly in response to force resulting from *contact of the toe guard with the floor 13a of the hoistway pit 13*" (Page 2, final paragraph), wherein "it" of said "part of it" is in reference to a toe guard assembly comprising a fixed (toe guard) member (7a) and a slideable (toe guard) member (7b), and wherein further said slideable (toe guard) member is a single, rigid piece; consequently, the reference of Mori et al discloses the invention as claimed.

With respect to the teaching of Martin, Examiner concurs with applicant that Martin's toe guard is pivotally mounted; however, Martin nevertheless teaches an incorporation of a safety switch that is tripped once his toe guard moves to "... an upper(most) end of allowable travel..." as surmised by the Examiner in the previous office action. That a safety switch incorporated in the device of Mori et al would require a form and/or mounting to accommodate a vertically slideable - in lieu of a vertically rotatable – toe guard member would be well within the capabilities of one having ordinary skill in the art.

Consequently, applicant's arguments are not persuasive in overcoming the rejections based on the prior art of record of the previous office action.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

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mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Rivera et al (6,095,288), Baumann (2004/0206581) and Ketonen (7,350,627) are cited for an elevator having a retractable toe guard, a slidable sill plate, and a telescoping toe guard with by-passable safety switch, respectively.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stefan Kruer whose telephone number is 571.272.5913. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571.272.6856. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866.217.9197 (toll-free).

/Stefan Kruer/

Examiner, Art Unit 3654

29 January 2009

/Peter M. Cuomo/

Supervisory Patent Examiner, Art Unit 3654